

SENATE BILL No. 417

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-6; IC 24-9; IC 34-7-4-2; IC 36-2-7-10.

Synopsis: Deceptive mortgage practices. Prohibits deceptive acts committed in respect to mortgage transactions. Establishes the deceptive mortgage practices unit under the attorney general. Provides penalties and enforcement procedures for deceptive mortgage acts. Appropriates \$150,000 to the legislative council to contract for a study of mortgage foreclosure in Indiana.

Effective: Upon passage; July 1, 2004.

Clark

January 12, 2004, read first time and referred to Committee on Rules and Legislative Procedure.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 417

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations, consumer sales and credit and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-6-3-3, AS AMENDED BY P.L.2-2002,
2 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]: Sec. 3. If the attorney general has reasonable cause to
4 believe that a person may be in possession, custody, or control of
5 documentary material, or may have knowledge of a fact that is relevant
6 to an investigation conducted to determine if a person is or has been
7 engaged in a violation of IC 4-6-9, IC 4-6-10, IC 13-14-10,
8 IC 13-14-12, IC 13-24-2, IC 13-30-4, IC 13-30-5, IC 13-30-6,
9 IC 13-30-8, IC 23-7-8, IC 24-1-2, IC 24-5-0.5, IC 24-5-7, IC 24-5-8,
10 **IC 24-9**, IC 25-1-7, IC 32-34-1, or any other statute enforced by the
11 attorney general, only the attorney general may issue in writing, and
12 cause to be served upon the person or the person's representative or
13 agent, an investigative demand that requires that the person served do
14 any combination of the following:
15 (1) Produce the documentary material for inspection and copying
16 or reproduction.
17 (2) Answer under oath and in writing written interrogatories.

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(3) Appear and testify under oath before the attorney general or the attorney general's duly authorized representative.

SECTION 2. IC 4-6-12 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 12. Deceptive Mortgage Practices Unit

Sec. 1. As used in this chapter, "unit" refers to the deceptive mortgage practices unit established under this chapter.

Sec. 2. The attorney general shall establish a deceptive mortgage practices unit to enforce IC 24-9 and to carry out this chapter.

Sec. 3. The unit shall do the following:

(1) Investigate allegations of deceptive acts in connection with mortgage lending.

(2) Investigate violations of IC 24-9.

(3) Institute appropriate administrative and civil actions to redress:

(A) deceptive acts in connection with mortgage lending;

(B) violations of IC 24-9; and

(C) violations of IC 24-5-0.5.

(4) Cooperate with federal, state, and local law enforcement agencies in the investigation of:

(A) deceptive acts in connection with mortgage lending;

(B) criminal violations involving deceptive acts in connection with mortgage lending; and

(C) violations of IC 24-9.

Sec. 4. The following shall cooperate with the unit to implement this chapter:

(1) The Indiana professional licensing agency and the appropriate licensing boards with respect to persons licensed under IC 25.

(2) The department of financial institutions.

(3) The department of insurance with respect to the sale of insurance in connection with mortgage lending.

(4) The securities division of the office of the secretary of state.

(5) The supreme court disciplinary commission with respect to attorney misconduct.

(6) The Indiana housing finance authority.

Sec. 5. The attorney general may file complaints with any of the entities listed in section 4 of this chapter to carry out this chapter and IC 24-9.

Sec. 6. The establishment of the unit and the unit's powers does

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not limit the jurisdiction of an entity described in section 4 of this chapter.

Sec. 7. The attorney general and an investigator of the unit may do any of the following when conducting an investigation under section 3 of this chapter:

(1) Issue and serve a subpoena for the production of records, including records stored in electronic data processing systems, for inspection by the attorney general or the investigator.

(2) Issue and serve a subpoena for the appearance of any person to provide testimony under oath.

(3) Apply to a court with jurisdiction to enforce a subpoena described in subdivision (1) or (2).

Sec. 8. (a) The deceptive mortgage practices unit account within the state general fund is established for the purpose of supporting the operations of the unit. The account is administered by the attorney general.

(b) The account consists of fees collected under IC 24-9-3.

(c) The expenses of administering the account shall be paid from money in the account.

(d) The treasurer of state shall invest the money in the account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.

(e) Interest earned on investments under subsection (d) shall be credited to the account when received.

(f) Money in the account at the end of a state fiscal year does not revert to the state general fund. However, if the amount of money in the account at the end of a particular state fiscal year exceeds one hundred fifty thousand dollars (\$150,000), the treasurer of state shall transfer the excess from the account into the state general fund.

(g) There is annually appropriated to the attorney general from the deceptive mortgage practices unit account money sufficient for carrying out the purposes of this chapter and IC 24-9.

SECTION 3. IC 24-9 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

ARTICLE 9. MORTGAGE LOANS

Chapter 1. Prohibited Practices, Liability

Sec. 1. A person may not knowingly and intentionally make, propose, or solicit deceptive, fraudulent, false, or misleading statements on any mortgage document or any document related to a mortgage, including a mortgage application, real estate

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appraisal, real estate settlement, or closing document.

Sec. 2. For purposes of this chapter, "deceptive, fraudulent, false, or misleading statements" does not include mathematical errors, inadvertent transposition of numbers, typographical errors, or other bona fide error.

Sec. 3. (a) A person who violates this article is liable to a person harmed by the violation for the following:

- (1) Actual damages, including consequential damages.
- (2) Costs and reasonable attorney's fees.

(b) A person may commence an action under this section within five (5) years after the person:

- (1) knows; or
- (2) by the exercise of reasonable diligence, should have known;

of the violation of this article.

(c) A person may be granted injunctive, declaratory, and other equitable relief as the court determines appropriate in an action to enforce compliance with this chapter.

(d) An award of actual damages under subsection (a)(1) has priority over a civil penalty imposed under this article.

Chapter 2. Penalties and Enforcement

Sec. 1. A person who knowingly or intentionally violates this article commits an act that is actionable by the attorney general under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

Sec. 2. (a) The attorney general and the deceptive mortgage practices unit established under IC 4-6-12 shall enforce this article within five (5) years after a violation.

(b) The attorney general may refer a matter under this chapter to a prosecuting attorney for enforcement.

Sec. 3. (a) The attorney general may bring an action to enjoin a violation of this article. A court in which the action is brought may:

- (1) issue an injunction;
- (2) order a person to pay actual damages;
- (3) void or limit the application of obligations that violate this article;
- (4) order a person to reimburse the state for reasonable costs of the attorney general's investigation and prosecution of the violation of this article; and
- (5) impose a civil penalty of not more than two thousand dollars (\$2,000) per violation.

(b) A person who violates an injunction under this section is

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1 subject to a civil penalty of not more than fifteen thousand dollars
2 (\$15,000) per violation.

3 (c) The court that issues an injunction retains jurisdiction over
4 a proceeding seeking the imposition of a civil penalty under this
5 section.

6 (d) The attorney general, acting in the name of the state, has the
7 exclusive right to petition for imposition of a civil penalty under
8 this section.

9 (e) If a court determines that a person:

10 (1) has violated an injunction issued under this section; and

11 (2) must pay a civil penalty;

12 the court shall require the person to reimburse the state for
13 reasonable costs related to bringing the action under this section.

14 Chapter 3. Fees

15 Sec. 1. The county recorder shall assess a fee of three dollars
16 (\$3) under IC 36-2-7-10(b)(11) for each mortgage recorded. The
17 fee shall be paid to the county treasurer at the end of each calendar
18 month as provided in IC 36-2-7-10(a).

19 Sec. 2. The county treasurer shall credit fifty cents (\$0.50) of the
20 fee collected under IC 36-2-7-10(b)(11) for each mortgage recorded
21 to the county recorder's records perpetuation fund established
22 under IC 36-2-7-10(c).

23 Sec. 3. On or before June 20 and December 20 of each year,
24 after completing an audit of the county treasurer's monthly reports
25 required by IC 36-2-10-16, the county auditor shall distribute to
26 the auditor of state two dollars and fifty cents (\$2.50) of the
27 mortgage recording fee collected under IC 36-2-7-10(b)(11) for
28 each mortgage recorded by the county recorder.

29 Sec. 4. The auditor of state shall distribute one hundred percent
30 (100%) of the mortgage recording fee distributed to the auditor of
31 state to the deceptive mortgage practices unit account established
32 by IC 4-6-12-8.

33 SECTION 4. IC 34-7-4-2, AS AMENDED BY P.L.2-2002,
34 SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2004]: Sec. 2. Statutes outside IC 34 providing causes of
36 action or procedures include the following:

37 (1) IC 4-21.5-5 (Judicial review of administrative agency actions).

38 (2) IC 22-3-4 (Worker's compensation administration and
39 procedures).

40 (3) IC 22-4-17 (Unemployment compensation system, employee's
41 claims for benefits).

42 (4) IC 22-4-32 (Unemployment compensation system, employer's

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appeal process).

(5) IC 22-9 (Civil rights actions).

(6) **IC 24-9 (Mortgage loans).**

(7) IC 31-14 (Paternity).

~~(7)~~ (8) IC 31-15 (Dissolution of marriage and legal separation).

~~(8)~~ (9) IC 31-16 (Support of children and other dependants).

~~(9)~~ (10) IC 31-17 (Custody and visitation).

~~(10)~~ (11) IC 31-19 (Adoption).

~~(11)~~ (12) IC 32-27-2, IC 32-30-1, IC 32-30-2, ~~IC 32-30-2.1,~~
~~IC 32-30-2,~~ IC 32-30-4, IC 32-30-9, IC 32-30-10, IC 32-30-12,
 IC 32-30-13, and IC 32-30-14 (Real property).

~~(12)~~ (13) IC 33-1-3 (Attorney liens).

SECTION 5. IC 36-2-7-10, AS AMENDED BY P.L.2-2003,
 SECTION 101, IS AMENDED TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) The county recorder shall
 tax and collect the fees prescribed by this section for recording, filing,
 copying, and other services the recorder renders, and shall pay them
 into the county treasury at the end of each calendar month. The fees
 prescribed and collected under this section supersede all other
 recording fees required by law to be charged for services rendered by
 the county recorder.

(b) The county recorder shall charge the following:

(1) Six dollars (\$6) for the first page and two dollars (\$2) for each
 additional page of any document the recorder records if the pages
 are not larger than eight and one-half (8 1/2) inches by fourteen
 (14) inches.

(2) Fifteen dollars (\$15) for the first page and five dollars (\$5) for
 each additional page of any document the recorder records, if the
 pages are larger than eight and one-half (8 1/2) inches by fourteen
 (14) inches.

(3) For attesting to the release, partial release, or assignment of
 any mortgage, judgment, lien, or oil and gas lease contained on a
 multiple transaction document, the fee for each transaction after
 the first is the amount provided in subdivision (1) plus the amount
 provided in subdivision (4) and one dollar (\$1) for marginal
 mortgage assignments or marginal mortgage releases.

(4) One dollar (\$1) for each cross-reference of a recorded
 document.

(5) One dollar (\$1) per page not larger than eight and one-half (8
 1/2) inches by fourteen (14) inches for furnishing copies of
 records produced by a photographic process, and two dollars (\$2)
 per page that is larger than eight and one-half (8 1/2) inches by

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fourteen (14) inches.

(6) Five dollars (\$5) for acknowledging or certifying to a document.

(7) Five dollars (\$5) for each deed the recorder records, in addition to other fees for deeds, for the county surveyor's corner perpetuation fund for use as provided in IC 32-19-4-3 or IC 36-2-12-11(e).

(8) A fee in an amount authorized under IC 5-14-3-8 for transmitting a copy of a document by facsimile machine.

(9) A fee in an amount authorized by an ordinance adopted by the county legislative body for duplicating a computer tape, a computer disk, an optical disk, microfilm, or similar media. This fee may not cover making a handwritten copy or a photocopy or using xerography or a duplicating machine.

(10) A supplemental fee of three dollars (\$3) for recording a document that is paid at the time of recording. The fee under this subdivision is in addition to other fees provided by law for recording a document.

(11) Three dollars (\$3) for each mortgage on real estate recorded, in addition to other fees required by this section, distributed as follows:

(A) Fifty cents (\$0.50) is to be deposited in the recorder's record perpetuation fund.

(B) Two dollars and fifty cents (\$2.50) is to be distributed to the auditor of state on or before June 20 and December 20 of each year as provided in IC 24-9-3-3.

(c) The county treasurer shall establish a recorder's records perpetuation fund. All revenue received under subsection (b)(5), (b)(8), (b)(9), and (b)(10), **and fifty cents (\$0.50) from revenue received under subsection (b)(11)**, shall be deposited in this fund. The county recorder may use any money in this fund without appropriation for the preservation of records and the improvement of record keeping systems and equipment.

(d) As used in this section, "record" or "recording" includes the functions of recording, filing, and filing for record.

(e) The county recorder shall post the fees set forth in subsection (b) in a prominent place within the county recorder's office where the fee schedule will be readily accessible to the public.

(f) The county recorder may not tax or collect any fee for:

- (1) recording an official bond of a public officer, a deputy, an appointee, or an employee; or
- (2) performing any service under any of the following:

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(A) IC 6-1.1-22-2(c).

(B) IC 8-23-7.

(C) IC 8-23-23.

(D) IC 10-17-2-3.

(E) IC 10-17-3-2.

(F) IC 12-14-13.

(G) IC 12-14-16.

(g) The state and its agencies and instrumentalities are required to pay the recording fees and charges that this section prescribes.

SECTION 6. [EFFECTIVE JULY 1, 2004] (a) Notwithstanding IC 4-6-12-8, as added by this act, there is appropriated to the legislative council one hundred fifty thousand dollars (\$150,000) for the state fiscal year beginning July 1, 2005, and ending June 30, 2006, from the deceptive mortgage practices unit account under IC 4-6-12-8, as added by this act. The legislative council shall use this appropriation to contract with an independent organization to conduct a study of mortgage foreclosures occurring in Indiana during 2001, 2002, 2003, and 2004. The study must include the following information:

(1) The types of mortgage loans foreclosed.

(2) The foreclosure rates of each type of mortgage loan.

(3) Data on the conditions and causes resulting in the nonpayment of the mortgage loans by the borrowers.

(4) The locations of the mortgaged properties.

(5) Any other information on mortgage foreclosures that occurred in Indiana during 2001, 2002, 2003, and 2004 considered useful by the legislative council.

(b) No expenditures from the deceptive mortgage practices unit account established by IC 4-6-12-11, as added by this act, may be made by the attorney general before the transfer of the one hundred fifty thousand dollars (\$150,000) appropriated by this SECTION to the legislative council.

(c) The results of the study must be reported in an electronic format under IC 5-14-6 to the legislative council not later than December 31, 2005.

(d) This SECTION expires January 1, 2006.

SECTION 7. [EFFECTIVE UPON PASSAGE] Beginning July 1, 2005, the attorney general shall carry out the duties imposed upon the attorney general under IC 4-6-12 and IC 24-9, both as added by this act.

SECTION 8. An emergency is declared for this act.

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